

Remarks

The non-final Office Action mailed February 17, 2006 allowed claims 22, 23 and 31-33, and rejected claims 1-9, 11-13, 15-21 and 25-30. The Applicant's Attorney sincerely thanks the Examiner for the continued diligent efforts provided in this case.

The Applicant has hereinabove provided clarifying amendments to claims 1, 3-4, 18-19, 25 and 29. Independent claim 1 now generally features the recited "housing" as having "an upwardly extending flange which defines a climate conditioning aperture to accommodate a flow of atmospheric air between the interior and an external environment." Support for this amendment is provided including in the specification at page 5, lines 25-28 and FIGS. 4-17, 20-21 (note the exemplary "upwardly extending flange 122").

Claim 1 further now generally features the recited "climate conditioning unit" as "configured to be contactingly supported on a top surface of the housing surrounding the upwardly extending flange to facilitate said flow of atmospheric air through the climate conditioning aperture." Support includes in the specification at page 5, lines 20-25 and FIGS. 4-17, 20-21.

Claim 1 further generally features the recited "climate conditioning unit" as "further configured to be subsequently removed from the housing by an upwardly directed retraction of said unit from about said flange." Support includes the exploded view of FIG. 4 and in the specification at page 5, lines 15-19.

Dependent claim 3 now depends from claim 1 has been generally amended to further recite "a fastener which fastens the climate conditioning unit to the top surface of the housing so that the upwardly extending flange is disposed between the climate conditioning unit and the climate conditioning aperture." Support includes the previously presented language of claim 1,

as well as by FIGS. 4-17, 20-21. Claim 4 has been amended to better conform to amended claims 1 and 3.

Independent claim 18 has been amended as in claim 1 to generally recite the "housing" as having *"an upwardly extending flange which defines a climate conditioning aperture to accommodate a flow of atmospheric air between the interior and an external environment."*

Claim 18 has further been amended to now generally feature *"a climate conditioning unit which facilitates said flow of atmospheric air through the climate conditioning aperture, said unit comprising an upwardly extending support portion removeably supportable by a top surface of the housing adjacent in non-contacting relation to the upwardly extending flange opposite the climate conditioning aperture and a cover portion which spans the climate conditioning aperture, said unit further configured to be subsequently removed through upwardly directed retraction of said unit from about said flange."* Support includes that set forth above for claim 1, as well as in the specification at page 5, lines 13-29 and FIGS. 4-17, 20-21 (see e.g., FIG. 4 which shows an exemplary cover portion 114 and unnumbered upwardly extending support portion between 114 and fastener 118). Claim 18, as well as dependent claim 19, have further been amended to change "second means" to just "means."

Claim 25 has been amended to substitute the previously recited "first means" for *"a climate conditioning unit configured to be contactingly supported on a top surface of the housing surrounding the upwardly extending flange to facilitate said flow of atmospheric air through the climate conditioning aperture."* Support includes that set forth above for claim 1. The "second means" in claim 25 has similarly been amended to now simply recite "means."

Claim 29 has been similarly amended as set forth by claim 1, and support is provided as set forth above. Claim 29 further generally features *"the first climate conditioning unit has a*

*portion thereof that extends downwardly through the climate conditioning aperture when supported by said top surface, said portion retracted upwardly back through the climate conditioning aperture when the first climate conditioning unit is removed from the housing."*

Support at least includes the embodiments of FIGS. 11-15, each of which provide an exemplary heat source 132 that meets the foregoing claim language.

These amendments are believed to be proper, do not introduce new matter, remove limitations deemed unnecessary for patentability, and serve to place the application in proper condition for reconsideration and allowance.

#### **Objection to the Drawings**

The Office Action objected to the drawings under 37 CFR 1.83(a) on the basis that the drawings were viewed as failing to properly illustrate the claimed subject matter. In support of the objection, the Office Action stated:

*The drawings are objected to under 37 CFR 1.83(a) because they fail to show the "means for facilitating said flow of atmospheric air" as the **combination** [bold supplied in the original] of the cover assembly 112, the heating unit 132, the fan unit 134 and the cooled air unit 170 as described in the specification on page 11, lines 1-4. The drawings fail to show the structure that contains the combination of all these elements at one time. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP §608.02(d). (Non-Final Office Action mailed February 17, 2006, page 2, emphasis added)*

This is respectfully traversed. The Applicant submits that the objection was based on an improper claim construction of the recited means element in claims 18 and 25, which in turn was based on an unreasonable reading of the specification at page 11.

It appears that the Examiner read the text at page 11 as meaning that the structure that corresponded to the recited means element (i.e., the structure disclosed in the specification that

carries out the recited function) was described as alternatively corresponding to (1) a set of all four elements 112, 132, 134 and 170 in combination, or (2) disclosed combinations thereof.

If so, the Applicant respectfully submits such was not a reasonable interpretation, nor was such the interpretation that a skilled artisan would take from this text. For the record, the Applicant submits that the skilled artisan would have understood the text to identify the corresponding structure as alternatively corresponding to each of the elements. The corresponding structure further alternatively corresponded to the various combinations thereof that were actually disclosed (e.g., 112 with 132, etc.).

Nevertheless, the objection has been obviated by the above amendments to independent claims 18 and 25, which have removed the associated means element in favor of reciting a "climate conditioning unit." It is believed that the requirements of 37 CFR 1.83 and MPEP 608.02 are fully met by the drawings as originally filed, and reconsideration and withdrawal of the objection to the drawings are accordingly requested.

#### **Rejection of Claims Under 35 U.S.C. §112**

Claims 18-21 and 25 were rejected as failing to meet the enablement requirement of §112. This is respectfully traversed, but has been obviated by the amendments to claims 18 and 25 as discussed above. Reconsideration and withdrawal of the rejection are accordingly solicited.

### Rejection of Claims Under 35 U.S.C. §103(a)

Various rejections were provided to the claims under §103(a). These will be discussed in turn.

#### 1. Rejections based on Bradburn '239 and Bonforte '094

Claims 1-4, 11-13, 15, 18, 26 and 27 were rejected as being obvious over U.S. Patent No. 5,575,239 to Bradburn et al. ("Bradburn '239") in view of U.S. Patent No. 2,625,094 to Bonforte ("Bonforte '094"). Dependent claims 6-8 and 16-17 were rejected over these base references in further view of additional references. These rejections are respectfully traversed.

Bradburn '239 and Bonforte '094 each fail to teach or suggest a housing for an animal enclosure that includes "an upwardly extending flange which defines a climate conditioning aperture to accommodate a flow of atmospheric air between the interior and an external environment," as claimed by independent claim 1.

The references further fail to teach or suggest "a climate conditioning unit configured to be contactingly supported on a top surface of the housing surrounding the upwardly extending flange to facilitate said flow of atmospheric air through the climate conditioning aperture," as claimed by claim 1. This arrangement advantageously facilitates the desired placement of the climate conditioning unit onto the housing and over the climate conditioning aperture, as well as the subsequent upward retraction thereof – see e.g., specification, page 5, lines 13-29.

One skilled in the art would further not be motivated from these references, alone or in combination with other art of record, to arrive at the claimed subject matter. Reconsideration and withdrawal of the rejection of claim 1, and for the claims depending therefrom, are respectfully requested on these bases.

With regard to independent claim 18, the references fail to teach or suggest "a climate conditioning unit which facilitates said flow of atmospheric air through the climate conditioning aperture, said unit comprising an upwardly extending support portion removeably supportable by a top surface of the housing adjacent in non-contacting relation to the upwardly extending flange opposite the climate conditioning aperture and a cover portion which spans the climate conditioning aperture, said unit further configured to be subsequently removed through upwardly directed retraction of said unit from about said flange." Moreover, there is nothing to motivate one skilled in the art from these references to arrive at the subject matter of claim 18. Reconsideration and withdrawal of the rejection of claim 18, and for the claims depending therefrom, are accordingly requested.

## 2. Rejections based on Gordon '387 and Bonforte '094

Claims 1, 5, 9, 18 and 27 were rejected as being obvious over U.S. Patent No. 4,443,387 to Gordon ("Gordon '387") in view of Bonforte '094. Claims 21 and 28-30 were rejected over these base references and further in view of additional references. These rejections are respectfully traversed.

Gordon '387 along with Bonforte '094 at least fail to teach or suggest the recited housing with "an upwardly extending flange which defines a climate conditioning aperture" as recited by independent claim 1. Instead, Gordon '387 provides an evaporative cooling device 10 configured to extend through an aperture in a housing surface 12. The device 10 includes a bell shaped projection 56 with lower opening 66 and a series of interior placed directional louvers 78, 80 to controllably direct forced air flow admixed with water vapor for cooling purposes. See FIGS. 1 and 3; col. 6, lines 38-56; col. 7, lines 32-40; col. 8, line 66 to col. 9, line 3.

Gordon '387 and Bonforte '094 further fail to teach or suggest "a climate conditioning unit configured to be contactingly supported on a top surface of the housing surrounding the upwardly extending flange to facilitate said flow of atmospheric air through the climate conditioning aperture, and further configured to be subsequently removed from the housing by an upwardly directed retraction of said unit from about said flange." Instead, the device 10 of Gordon '387 incorporates the bell shaped projection 56 which is not retractable back through the aperture in housing member 12.

When evaluating a rejection under §103(a), the references must be viewed "as a whole" to what they fairly teach or suggest to the skilled artisan. *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006). The question is not "whether each element existed in the prior art, but rather whether the prior art made obvious the invention as a whole for which patentability is claimed." *Hartness International, Inc. v. Simplimatic Engineering Co.*, 2 USPQ2d 1826, 1832 (Fed. Cir. 1987).

In the present case, the Applicant respectfully submits that there is nothing to motivate one skilled in the art to combine Gordon '387 with Bonforte '094, or the other art of record, to arrive at the claimed combination. Evidence for such motivation must be "clear and particular," and no such showing can be reasonably made here. See *In re Dembiczak*, 50 USPQ2d 1614 (Fed. Cir. 1999).

Gordon '387 is a one piece unit (see FIGS. 4 and 5) that clearly must be "built in place" into the surrounding structure 12. It is not reasonable to view portions of the bell shaped projection 56 as the recited "flange" of the structure 12, since the interior surfaces support and actuate the aforementioned louvers.

An advantage of the claimed combination is the ability to set the recited climate conditioning unit down over the climate conditioning aperture, using the flange to help locate the

placement of the unit. Moreover, the climate conditioning unit is claimed as readily removable from the housing through upward displacement from the flange. These are features that do not appear to even be contemplated by either of the references.

Accordingly, the Applicant believes that the claimed combination represents a patentable improvement over the art, including Gordon '387 and the other art of record. Reconsideration and withdrawal of the rejection of claim 1, and for the claims depending therefrom, are respectfully requested.

For similar reasons, independent claims 18 and 29 are also believed to define subject matter that is patentable over Gordon '387 and the other art of record. Reconsideration and withdrawal of the rejections of these claims, and for the claims depending therefrom, are respectfully requested on this basis as well.

#### **Allowable Subject Matter**

The Applicant gratefully acknowledges the allowance of claims 22, 23 and 31-33. In view of the above amendments and arguments, the remaining claims are believed to be allowable as well.

#### **Conclusion**

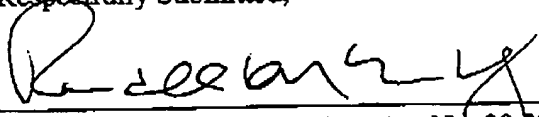
This is intended to be a complete response to the non-final Office Action mailed February 17, 2006. Reconsideration and allowance of all of the claims in the application are respectfully requested.



Should any questions arise concerning this response, the Examiner is invited to contact the below signed Attorney.

Respectfully Submitted,

By:

  
Randall K. McCarthy, Registration No. 39,297  
Bill D. McCarthy, Registration No. 26,772  
Daniel P. Dooley, Registration No. 46,369  
Mitchell K. McCarthy, Registration No. 38,794  
Fellers, Snider, Blankenship, Bailey and Tippens  
100 N. Broadway, Suite 1700  
Oklahoma City, Oklahoma 73102  
Telephone: (405) 232-0621  
Facsimile: (405) 232-9659  
Customer No. 33900